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GERMAN PROSECUTIONS OF NAZI WAR CRIMINALS

WALTER GRIEBEL *

The following is an account of the German efforts at adjudication after World War II. Before beginning, I want to make it clear that with this short report I do not wish to render an apology in any way.

German jurisdiction, which after World War II had ceased completely for a time, was limited by the Allies even after it recommenced. Superficially, it concerned only deeds committed by Germans against Germans. Understandably, the International Military Tribunal had absolute precedence in matters concerning crimes by Germans against non-Germans. Nevertheless, the norms which Professor Ferencz expounded were valid later as German norms and were maintained as German norms under German law. Therefore, I believe that the German authorities after 1955, and particularly after 1960, were in a better position to prosecute the perpetrators of these crimes. We did not require instruments of international law since all crimes had been committed by Germans or German auxiliaries and were subject to German penal law. Thus, they could be adjudicated under German substantive law itself.

Nevertheless, it must be noted that after 1957 the interest in prosecuting these individuals diminished and was nearly extinguished. It is perhaps understandable that in German circles there was a certain shame and a certain fear to prosecute oneself, or at least one's relatives or friends. Furthermore, a great number of principal war criminals who had survived Nuremberg were granted amnesty or set free from jail by the Allies.

This is one of the reasons why we young prosecutors (at that time I was a young prosecutor) were discouraged from enthusiastically prosecuting these crimes. In the department of the prosecutor's office, where I started in 1957, there was one district attorney who used only one-third of his time to prosecute Nazi war criminals. This attitude, however, changed as more and more details surfaced about the crimes that had been committed. Nevertheless, one trial which had been commenced against one of the Einsatz Corps, which were mentioned before as one of the death squads, ended in the complete exoneration of all the defendants. This result not only led to a considerable protest from the service of the prosecutors, but also finally led to the institution of a central authority in

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Ludwigsburg, which had jurisdiction to collect all the facts known about certain matters and pass them on to the various district attorneys who had jurisdiction of the persons. In contrast to the district attorney who had one-third of his work in Nazi prosecution in 1957, by 1964 there were 12 full-time prosecutors in Frankfurt.

The second material cause for the intensification of the prosecution was the fact that on March 1, 1958, a small report was received by the district attorney's office at Frankfurt. It was the report of a former inmate of Auschwitz who saw in the street, or the railroad, one of his torturers who had hundreds, if not thousands, of people on his conscience. This report led to a person who unfortunately had died too soon. This report went to the then chief district attorney in Frankfurt, Bower, whose name I wish to mention here. He vigorously followed up the prosecution of this matter, which led to the first of four trials concerning the activities in the Auschwitz complex which were conducted in Frankfurt.

In the first Auschwitz trial, there were at first twenty-three defendants. It had to be concluded against four of them because of death or disease. The trial which was commenced in 1963 ended with the following judgment: three persons were acquitted, six persons were condemned for life and the rest of them were sentenced to three to fifteen years in prison.¹ This judgment was sustained on appeal with one exception. Of the six who had been sentenced to life, four died in jail, one is still in jail and one was discharged because of a very serious illness.

Finally the third fact which furthered the efforts exerted to prosecute Nazi war criminals was the capture of and proceeding against Eichmann in Israel. One of my colleagues took part in that as an observer and gave us very valuable tips concerning our further work.

In order to report to you about my twenty-five years of activities in this area, I have to give you one example: I prosecuted two men by the names of Kumin and Huncher, who were responsible for the deportation of several hundred thousand Jews from Hungary. When the appeal was finally concluded, Kumin received a life sentence and Huncher was sentenced to eight years imprisonment. Kumin has been in jail since 1964.

In the Federal Republic of Germany until this date, there occurred sixty-nine thousand one hundred and thirty proceedings. These resulted in twelve death sentences and a very small number of monetary damages. The last figure is explained by the fact that in 1946-47, it was still possible

1. E. BONHOEFFER, *AUSCHWITZ TRIALS: LETTERS FROM AN EYEWITNESS* 13, 59-60 (1967).

to accuse and try people for simple assaults as well as assault and battery. Nevertheless, a great number of proceedings had to be terminated since a great number of perpetrators could not be located, could not be traced, had died or had moved away.

Let me say in conclusion that a few months or years ago, the world press spread the news that because of the opening of the U.N. files, up to thirty thousand proceedings had been initiated in Germany.² This number is correct only mathematically. Of all these thirty thousand cases, maybe one percent will be conducted with some degree of success.

The efforts which, as I said before, commenced in 1958-60, deserved much greater international support than they received. The Iron Curtain nations and the West, including the United States, did not make many documents available to us. This, however, is only a fact that I wish to be known and shall not constitute an excuse. I could talk for many hours about the perpetrators and the facts and the details concerning the facts, but I hope that with these brief remarks I have contributed to an understanding of what we did.

Thank you very much.

2. See, e.g., W. *Germany to Probe Up to 13,000 New Nazi War Crime Cases*, Reuters, Jan. 10, 1989; Heinrich, *Justice Will Never Catch Most Remaining War-Crimes Suspects*, Reuters, Mar. 6, 1988.

